

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GEORGIA TRAYLOR
Claimant

VS.

J.C. PENNEY COMPANY, INC.
Respondent,
Self-Insured

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Docket No. 230,601

ORDER

Claimant appealed the July 27, 2001 Award entered by Administrative Law Judge Steven J. Howard. The Board heard oral argument on February 5, 2002.

APPEARANCES

Mark E. Kolich of Kansas City, Kansas, appeared for claimant. Kip A. Kubin of Kansas City, Missouri, appeared for respondent and its insurance claims service.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for bilateral upper extremity injuries caused over an extended period of time by repetitive trauma. For purposes of computing the award, the parties agreed the appropriate accident date is January 16, 1998.

Finding that claimant sustained permanent injury to the right upper extremity only, the Judge awarded claimant permanent partial disability benefits for a 10 percent functional impairment to that extremity.

Claimant contends Judge Howard erred. Claimant argues that Doctors Lynn D. Ketchum, E. Bruce Toby, and Edward J. Prostic did not address the issue whether claimant

sustained permanent injury or impairment to her left upper extremity and, therefore, Dr. P. Brent Koprivica's opinion is uncontradicted that claimant has sustained a five percent permanent functional impairment to the left upper extremity. Accordingly, claimant argues she has sustained an "unscheduled" injury and should be awarded a 15 percent permanent partial general disability under K.S.A. 1997 Supp. 44-510e.

Conversely, respondent contends the Award should be affirmed. Respondent argues the reports from Doctors Ketchum, Toby and Prostic do contradict Dr. Koprivica's opinion that claimant has sustained permanent injury to the left upper extremity as the doctors were not limited to evaluating only the right upper extremity. Accordingly, respondent argues the doctors' failure to rate the left upper extremity indicates the doctors found no impairment in that extremity.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. The Award should be affirmed.
2. In approximately October 1993, claimant began working in respondent's warehouse filling orders. Claimant, who is right-handed, in approximately November 1996 began experiencing symptoms in her dominant hand. Over the next two years, claimant continued to work for respondent, developing symptoms in her left hand. The parties agree the appropriate date of accident for this series of repetitive trauma is January 16, 1998.
3. In early April 1998, at her attorney's request, claimant saw Dr. Lynn D. Ketchum. In his April 2, 1998 report, the doctor noted claimant was having symptoms in both upper extremities, with the right worse than the left. After examining both upper extremities, the doctor diagnosed de Quervain's syndrome on the right and recommended a simple surgical procedure to release the first extensor compartment.
4. In late August 1998, claimant met with orthopedic surgeon Dr. E. Bruce Toby. Noting that he was seeing claimant primarily for right wrist problems, the doctor, nonetheless, also noted claimant was experiencing some left wrist pain that was much less severe than the right wrist pain. Dr. Toby diagnosed "[r]ecalcitrant de Quervain's stenosing tenosynovitis" and also recommended a de Quervain's release, which the doctor performed on December 22, 1998.

5. In addition to their August 1998 meeting and the December 1998 surgery, Dr. Toby also had office visits with claimant in late December 1998, early February 1999 and late March 1999. None of the doctor's notes from those three office visits mentions any left wrist complaints or that they even discussed the left upper extremity.

6. In a May 3, 1999 letter to Liberty Mutual Insurance Company, Dr. Toby wrote that claimant had "a 0% permanent partial impairment to the involved upper extremity" due to the de Quervain's stenosing tenosynovitis and subsequent surgery.

7. At the request of her attorney, claimant saw Dr. Ketchum for a second time in early June 1999. At that visit, the doctor noted claimant was describing paresthesias in the right ulnar nerve, as she had described in April 1998. But the doctor did not note that claimant was experiencing symptoms in her left wrist. In a June 1, 1999 letter to claimant's attorney, Dr. Ketchum wrote that claimant had a seven and one-half percent functional impairment to the right upper extremity. The letter is silent whether claimant had any impairment in the left upper extremity.

8. In early December 1999, at the request of her attorney, claimant saw Dr. P. Brent Koprivica, who is board-certified in both occupational medicine and emergency medicine. Based upon his evaluation, the doctor found claimant had a chronic de Quervain's syndrome on the right, mild ulnar nerve entrapment on the right and overuse tendinitis on the left, all of which were caused by claimant's job filling orders.

9. According to Dr. Koprivica, claimant had a 20 percent functional impairment to the right upper extremity and a five percent functional impairment to the left upper extremity, which comprised a 15 percent functional impairment to the body as a whole.

10. In February 2000, the Judge ordered an independent medical evaluation by orthopedic surgeon Dr. Edward J. Prostic. The doctor examined claimant in early July 2000. The doctor noted in his July 5, 2000 report to Judge Howard that claimant had soreness in her right wrist and occasional soreness in the same area in the left. The doctor examined both upper extremities and found that loss of grip strength was the only abnormality he could find in the left upper extremity. Considering the clinical findings and claimant's medical records, Dr. Prostic determined that claimant had a 10 percent functional impairment to the right upper extremity due to her residual symptoms from de Quervain's tendinitis and symptoms of ulnar nerve entrapment. In his report, Dr. Prostic did not specifically state whether claimant had any impairment in the left upper extremity.

11. The Board affirms the Judge's conclusion that claimant is entitled to receive permanent partial disability benefits for a 10 percent functional impairment to the right upper extremity only as a "scheduled" injury under K.S.A. 1997 Supp. 44-510d. The Board concludes it is more probably true than not that both Dr. Prostic and Dr. Ketchum

considered claimant's left upper extremity complaints when they formulated their opinions of claimant's functional impairment. As noted above, Dr. Ketchum noted that claimant was having symptoms in both upper extremities in April 1998 when he first saw her. Moreover, Dr. Prostic specifically notes in his July 2000 report to the Judge that he examined claimant's left upper extremity and that the only abnormality that he found in that extremity was in claimant's grip strength and that she was reporting repetitive use injuries to her hands.

The Board concludes Dr. Ketchum and Dr. Prostic did not specifically comment on the percentage of functional impairment in claimant's left upper extremity because they found none. The Board adopts Dr. Prostic's opinion that claimant sustained a 10 percent functional impairment to the right upper extremity as a result of the work that she performed for respondent.

AWARD

WHEREFORE, the Board affirms the July 27, 2001 Award entered by Judge Howard.

IT IS SO ORDERED.

Dated this ____ day of February 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Mark E. Kolich, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Workers Compensation Director